Note: This report was prepared for by Edward Coll as public comment on public access to the State of Hawaii Department of Commerce and Consumer Affairs, but the conclusions and recommendations also apply to the franchising issues now before you. In this context the views expressed are the views of Edward Coll and do not necessarily reflect the views of other CTPA members.

Hawaii Public Access Model

Pushing the public speaker to the back of the access bus

My name is Edward Coll. I am a former Ho`ike Board Member, a former "terminated" public producer, and the current President of the Hawaii Community Television Producers Association or CTPA. CTPA is the oldest non-profit corporation representing the interests of the public access producers in the State of Hawaii. CTPA predates all the state created PEG non-profits. I am also a lifelong advocate of participatory democratic communications, and an avid participant/observer, and practitioner of participatory action research. This means I test systems for functionality by using them.

DCCA's notice stated the purpose for these public comment meetings is:

> seeking to obtain the public's general input and comments on issues relating to public access television services, whether the department should seek an exemption from the requirement that those services be procured through a competitive bid process and, if not, what requirements the department should include in any request for proposal.

The position of CTPA is that:

1. DCCA should <u>not</u> seek an exemption from state procurement law.
2. DCCA should comply with state procurement law and use the competitive RFP bid process to procure public access television services, and
3. the management and funding of the public, education, and government access television services be separated into three distinct sectors to ensure transparency, oversight and accountability.

CTPA recommends:

1. Splitting the PEG funding into three allocations. CTPA recommends an allocation split of 60% for the Public, and 20% each for Government and Education (which is also Government).
2. Let E and G sectors determine how to allocate their funding to meet their mission(s).
3. Follow state procurement law to release an RFP for Public Access services.
4. Contractually require the successful Public Access service provider to strictly comply with all applicable state open records and sunshine laws.
5. Contractually require the successful Public access service provider to strictly comply with their first-come, nondiscriminatory mission.

If DCCA requests and is granted an exemption from state procurement law, CTPA would recommend the sole source PEG be contractually obligated to comply with:

1. the "first-come, non discriminatory access" federal mandate,
2. a contractual prohibition against bidding on RFPs, or any "for pay" contracts,
3. a contractual prohibition against "facilitated productions" (producing programs for speakers instead of training speakers to use the technology for themselves) and

4. all applicable state open records, and sunshine laws.

From CTPA's perspective government actors (including education) have pushed the public speaker to the back of the access bus as predicted in a variety of DCCA commissioned reports which evidently are gathering dust on a shelf somewhere. CTPA has exhumed these document to discovered a history of what our members have experienced first hand. DCCA has created a PEG model which has institutionalized discrimination against the public speaker. CTPA believes that:

1. lack of DCCA oversight,
2. the lack of competitive RFP process and
3. the co-mingling of PEG funds, administration, functions, and missions are at the root of the systemic institutionalized discrimination confronting the public speaker.

CTPA calls this triad ″The Hawaii Model″.

The Hawaii Model

If one wanted a model to collect and divert public money and resources away from the public producer to government uses (without raising taxes) while claiming it's for "public access" -- look no further than the Hawaii Model.

The dysfunctional Hawaii Model offers:

1. Central franchising authority that provides unitary control (no worry about localism here)
2. No need to raise taxes (politicians of both parties like this feature)
3. Money is collected from cable subscribers by the cable company as part of their cable bill (No pay, no play, no option)
4. Money is transfered directly from subscriber to the cable company to the PEG non-profit where resources are slushed back to government uses (a state mandated stealth user tax on cable subscribers that does not go through the general fund)
5. The government created non-profits has no members except the board itself, and
6. The government appoints the board majority
7. PEGs become government subsidized profit centers that are allowed to compete with independent producers for lucrative "for-pay" contracts
8. The non-profits creates an arms length distance from legal liability to protect the states deep pockets by outsourcing responsibility to the comparatively shallow pocketed non-profits PEGs.
9. Designed-in blind spots make reporting requirements easy for the PEGs and oversight by DCCA completely ineffective.

Yes the Hawaii Model has it all. The only problem with this model is that the individual public producer must be pushed to the back of the access bus, or better yet pushed off the bus entirely if this diversion of public resources is to be slushed un-noticed back to government uses and the special, not public, interests serviced by DCCA oversight policies. These DCCA policies were developed in direct contradiction to a variety of DCCA commissioned reports and recommendations from several state Senators.

The Reports

In a 1989 report commissioned by Department of Commerce and Consumer Affairs (DCCA), the state's cable franchise authority and the agency responsible for the administration and oversight of Public Education, and Government (PEG) access, commissioned a report from nationally-known PEG consultant

Jean Rice. The Rice report recommended an initial seven member PEG boards consisting of four board members appointed by the governor and three board members appointed by CTPA. Rice also issued a perceptive warning.

> "the level of volunteer participation in access has been so significant over the years that any structure that does not allow full representation by community [producers] and other community representatives should not be an option considered by the State." - From the Legislative Reference Bureau (LRB) report Unscrambling the signals

Despite this warning by Rice the 1995 LRB report tersely stated:

> "The State chose a different model for its access organizations, one involving appointments by government and cable companies, with no specific representation for the independent producers."

The LRB report offered no explanation, nor justification for this DCCA action taken in direct contradiction to their own consultants recommendation and warning.

In a November 5, 1998 a letter from Hawaii State Senators, Les Ihara, Carol Fuginaka, and David Ige to the `Olelo Chairman (and copied to the Director of DCCA) the Senators wrote:

> "Having CTPA representatives on the Olelo Board of Directors would in our opinion, help to provide community producers access to policy decisions on Olelo operations and its management, improve relations between the Olelo Board and CTPA, and enhance Olelo's effectiveness in serving the cable television-viewing public."

The opinion was ignored and in fact both `Olelo and Ho`ike have been waged a protracted war of attrition on CTPA. Some CTPA members have been "terminated" without cause. Being a member of CTPA has assured discrimination by the PEGs, especially `Olelo on Oahu and Ho`ike on Kauai. CTPA membership became a liability. Both Ho`ike and `Olelo attempted end runs around CTPA by creating their own producers associations, advisory groups, program committees, etc. all of which were later unilaterally dissolved by 'Olelo and Ho`ike when input from these entities became problematic.

As DCCA's consultant Rice, and Senators Ihara, Ige, and Fuginaka correctly noted, excluding public producers access to policy decisions (rules, procedures, and bylaws) of PEG was a error of such a fundamental nature that the public sector of public access' very survival now hangs in the balance.

If one were to begin reading the 1997 DCCA commissioned report "Disputes over PEG Resources" and stopped reading after the subtitle "Splitting the baby is not the solution" one would incorrectly conclude that splitting Public, Education, and Government functions into three separate functional units is a very bad idea. No one wants to cut up a baby.

The question CTPA has for DCCA is who authored this subtitle and why does the subtitle contradict the Executive Summary conclusion? The conclusion reads:

> "if community control remains the foundation of PEG access, the government will have to rescue PEG access from itself. DCCA will have to limit involvement by other government entities in PEG access decisions."

Again, DCCA ignored their own commissioned report. DCCA chose not to "limit involvement by other government entities" but indeed, increased it as exemplified by DCCA's recent actions regarding Akaku.

The report conclusion continues:

> "though the government, as represented by the public education system, the State Legislature, and the county governments, might be appropriate beneficiaries of funds and channel time, they are not the decision makers in the current scheme: the PEG boards of directors are. DCCA should endorse and support the current model, or develop and implement another."

Again CTPA notes the report does not conclude, "splitting the baby is not the solution" but advises DCCA "support the current model, or develop and implement another." CTPA disagrees with the conclusion to support for the current model because the report incorrectly concluded that representatives of education, the legislature, and county government are not the decision makers. This conclusion is incorrect in light of the fact that DCCA appoints the PEG board(s) majority, and indeed those DCCA appointments have stacked PEG boards with board members sympathetic to E and G interests. The sole exception to PEG boards domination by DCCA appointed board members with E and G special interests is Akaku, the PEG on Maui, where DCCA has increased thier government involvement at the behest of another government entity education.

Not surprisingly the other PEG boards are dominated by DCCA appointed individuals favoring government interests. The current power struggle at Akaku serves to highlight the disputes over PEG resources when a majority of Akaku board members attempt to represent the interests of the public speaker. One of the 1997 report recommendations was to "Resolve the PEG structure in Maui County," yet DCCA has failed to do so. Sadly, DCCA appears to be a far-from-neutral party in this ongoing struggle for control of Akaku resources. In the opinion of CTPA, DCCA has inappropriately intervened on behalf of government (education) interests. The nail that sticks up gets pounded back down.

Fifteen years after the Rice report recommending a board structure, "to allow full representation by community producers" the DCCA in 2004 issued a johnny-come-lately, half-hearted mandated that each PEG hold an election to seat just one public producer.

The Election

The PEGs resisted this 2004 DCCA election mandate and initiated a skewed and less than transparent election process which violated best practices for fair elections. For example, both Ho`ike and `Olelo denied public producer candidates running for the board the public contact information (addresses and phone numbers) of the eligible voters. This created the ludicrous situation of holding an election where candidates were unable to contact eligible voters to ask for their vote.

This scheme of withholding public information from candidates gave PEG board and staff members the ability to potentially lobby voters on behalf of their preferred candidates. Unlike the public producer candidates who were unable to contact voters for support, the PEGs were in possession of the voter contact information and could use it for lobbying purposes. They obtained this information as a required condition of public access. All program producers are required the complete and sign a "required for public disclosure" form prior to their program being broadcast. This form requires a contact address and phone number, yet the PEGs refused to make this public information available to public producer candidates.

CTPA has no proof that PEGs used the undisclosed information they had in their possession to influence the outcome of the election, but CTPA is claiming the failure to disclose this public information created this possibility, and also provided plausible deny-ability for the PEGs if they were accused of undo influence. At Ho`ike, ballots were stuffed in an unlocked cardboard box in the Managing Director's office, and counted by a former Ho`ike board member a day before independent observers were told they could monitor the ballot count. Such actions make a mockery of a fair election practices.

Here is the 7-14-2004 complaint to DCCA from CTPA:

Director Recktenwald,
This is a formal complaint that Hoike intentionally designed (and conducted) an election process to prevent assessment of the integrity of the election results by:
* Failure to involve users in the process
* Failure to follow the published election time line
* Failure to allow independent third party oversight
* Failure to allow independent third party ballot count observers
* Failure to secure ballots
* Failure to follow standard election procedures (IE: not keeping ballot log: allowing staff to handle ballots without independent third party observers)
*Failure to provide candidates with the "Public Disclosure Information" required on every videotape submission form and broadcast program to allow candidates to contact voters.

These were intentional failures implemented by Hoike to make it impossible to evaluate the integrity of the election outcome. There is no independent verification that everything was done fairly.

The past documented misappropriation of public monies and subsequent cover-up by Hoike board and staff make their "word" highly suspect.
Please recover the misappropriated public monies, remove those board members, and staff responsible for the misappropriation and cover-up, nullify this flawed election, and do not renew the PEG contract with Hoike.

Edward Coll – CTPA President

Meanwhile CTPA VP Jeff Garland on Oahu filed complaints about `Olelo's unfair election practices. DCCA copied their response to CTPA VP Garland, and cc'd me to address my concerns as well. Here is the relevant sections of DCCA's response from 9-21-2004:

"Election process details were left up to the PEG access entities. As a result, we are unlikely to require a supervised recount or to review the ballot envelopes. We would, however, take evidence of a fraudulent or patently unfair election into account in determining whether to renew any PEG contract. As a result, we are grateful for your interest and invite you to provide us with any factual evidence of this type.

CTPA cannot provide "factual evidence" that unfair election practices by Ho`ike and `Olelo (what DCCA calls "election process details") were used to influence the election outcome. CTPA can only provide evidence that such practices would **allow** for such and outcome. DCCA is requiring a standard of evidence that these violations of fair election practices were **actually used** to conduct "a fraudulently or patently unfair election." CTPA of course does not have this evidence since the unfair election practices both creates the possibility of fraud, and provides plausible deny-ability that fraud occurred.

CTPA believes DCCA bears full responsibility for allowing these elections to proceed under these circumstances despite CTPA protests of improper oversight and evidence of numerous violations of fair election practices, by both `Olelo and Ho`ike. This flawed election mandated by DCCA was part of what DCCA calls "The Final Plan."

The Final Plan

The 1997 report "Disputed over PEG Resources further recommended DCCA:

1. Develop a statewide vision.
2. Endorse models to support that vision.
3. Resolve the PEG structure in Maui County.

DCCA's efforts to establish a statewide vision and model to support that vision came seven years after the 1997 report, released January 2004, it is summarized in the "Department of Commerce and Consumer Affairs' ("DCCA") Final Plan for Public, Education, and Government ("PEG") Access Executive Summary - January 2004 (the Final Plan)" CTPA was pleasantly surprised that the DCCA final PEGs plan called for:

> "Ensuring Openness and Accountability in PEG Operations. All PEGs overseen by DCCA will be required to adopt bylaws and policies consistent with the requirements of Hawaii's public meetings and open records laws."

CTPA has found the PEGs adamantly opposed to open records and sunshine law. In 2005 CTPA was not surprised that `Olelo would take the lead for the other PEGs and spent around $100,000 of their state mandated public funds to sue the state Office of Information Practices (OIP) to obtain a declaratory judgment that PEGs were not required to follow open records law.

This PEG lawsuit was triggered by requests from CTPA members and other producer candidates who request the contact addresses and phone numbers necessary to campaign for a PEG board seat in the DCCA's mandated election.

Also no surprise to CTPA is the fact that DCCA has to date failed to contractually require PEGs to adopt, "Bylaws and policies consistent with the requirements of Hawaii's public meetings and open records laws" but has instead has engaged in multi-year contract extensions in violation of state procurement law.

Highlighting the DCCA's Final Plan's lack of vision is the fact that the Final Plan made no mention of the RFP process under discussion today. This is despite the fact that the sole source versus the competitive RFP bidding process issue was brought to DCCA attention eleven years ago. In 1995 on the island of Kauai the Executive Director of Ho`ike, in a letter to the County of Kauai, asserted the DCCA had designated Ho`ike as the **sole source designee for government program production and broadcast**. An independent production company notified both the County of Kauai and the DCCA that Ho`ike's assertion was incorrect. The production company argued that although DCCA had designated Ho`ike as the sole source to manage the government channel, DCCA had not designated Ho`ike as the sole source for the production of government programs.

The DCCA agreed and confirmed Ho`ike had only been designated by DCCA as the sole source contractor for the management of the government access channel. Ho`ike had misinformed the County of Kauai. As a consequence since 1995 the County of Kauai has used the RFP process, and in 2003 another non profit, The Benefit Network, successfully bid on and successfully completed a one year contract to provide all County of Kauai government program productions.

This non profit organization assumed that the Ho`ike production assets that Ho`ike had used to complete the previous government contracts would be made available to any successful bidder. Ho`ike, however, removed all in-place government production equipment and refused to allow the successful bidder access to the production equipment and the Ho`ike studio. Ho`ike asserted that their rules and procedures disallowed the

use of Ho`ike equipment by any entity engaged in a contract-for-pay.

Ho`ike was unable, however, to cite the specific rule or procedure that forbid this, nor could Ho`ike explain how they themselves were able to exempt themselves from their own alleged rules and procedures, and use their production assets to engage in contracts-for-pay while denying other bidders this same access. Complaints from the successful non-profit bidder were to no avail and DCCA allowed Ho`ike to engage in this anti-competitive practice.

The successful non-profit bidder was forced into a position of not only providing the production services, but also had to provide the production equipment to complete the contract.

When the contract was completed September 2004, the County of Kauai tendered another RFP but this time required studio access as a condition of the RFP. Ho`ike again became the successful bidder using their subsidized studio assets as well as their subsidized remote production assets to underbid any potential competitor, again with the blessing of DCCA. Under such conditions Ho`ike again became the successful bidder.

The point is that the only successful non-profit bidder for the County of Kauai contract is the exception to the rule. That rule is:

> **that a state subsidized entity will in the vast majority of cases be the successful bidder against non state subsidized entities.**

This is tantamount to DCCA, the oversight agency, allowing Ho`ike sole use of state mandated subsidized production assets to bid on competitive contracts-for-pay against non-subsidized organizations who are denied access to this publically subsided equipment.

While the Final Plan is silent on the RFP issue of sole source PEG services by DCCA itself, the DCCA Final Plan's vision intends to allow this unfair and anti-competitive practice by the PEGs to continue. The Final Plan states:

> "PEG access organizations have also been involved in activities that some have deemed non-traditional. Examples include: (1) responding to local government RFPs for video and captioning services which results in competition with private organizations, and (2) the development of programming utilizing the organization’s resources, which could result in decreased availability of equipment or other resources (such as air time) to the public users of these access facilities. The development of such programming is sometimes referred to as “community building”. The DCCA has given the PEGs discretion to determine whether, and to what extent, they should engage in such activities. The DCCA will continue to allow the PEGs discretion in this area."

CTPA notes that PEGs are not limited by DCCA to bidding only on government contracts nor just against private organizations. The DCCA is giving PEGs the discretion to also bid on any contract-for-pay against any organization including other non-profits. CTPA believes it is fundamentally unfair to use subsidized production assets intended for public producers use to be used by PEGs to compete with other public and private non-profit entities, especially in light of the recent revelation that DCCA has been violating State procurement law for 11 years effectively excluding other non-subsidized public and private organizations from bidding against the PEGs.

The lesson to be learned is that if fairness and a level playing field are the goal, then the state mandated, cable subscriber funded subsidized assets should be made available for use by the successful bidder. If this is not done then releasing an RFP is a mere formality, and in no sense a real attempt at a fair competitive bidding process.

DCCA has accepted the Ho`ike 2005-2010 Self Sufficiency Plan in which Ho`ike states they plan to become self sufficient by engaging in the following activities:

Ho`ikes plan to compete with the private sector by engaging in "any number" of the following "fee for service" activities:

1. compete with video producers on the island by providing video production services for non-access purposes.
2. compete with equipment rental companies by renting equipment (video projectors, etc.) for non access purposes.
3. compete with hotels and rent space for conferences, meetings, etc. for non-access purposes.
4. compete with captioning services by providing off line captioning for non-access purposes.
5. compete with media duplication houses by offering duplication services for non-access purposes
6. compete with corporate consultants and curriculum designers by producing training videos for non-access purposes.
7. compete with video producers by producing political spots for candidates for non-access purposes

CTPA further notes that DCCA was aware in 1995 of this RFP issue between Ho`ike, the independent production company, and the County of Kauai, and it should have raised a red flag regarding DCCA's own practice of not following the RFP open bidding process in violation of state procurement law.

If red flags were not raised for DCCA in 1995 they certainly should have been raised in 2001 when CTPA Vice President Jeff Garland emailed DCCA Cable Television Administrator Clyde Sonobe the following email:

> Dear Clyde,
> I require information that spells out the procedures DCCA must follow in order to designate a nonprofit as an access organization. Also, when any access organization is renegotiating their contract with DCCA, are there specific procedures that must be followed by DCCA? Is DCCA required to post a public notice or Request for Proposal?
> Sincerely,
> Jeff Garland

Here is Cable TV Administrator's non-responsive reply:

> Mr. Garland,
> I understand that you already have a copy of the contract between Olelo and the DCCA which should provide the information that you are seeking. If by chance you do not have a copy, they are available for your review here in our offices. In order to avoid any delays, it would be optimal if you provided us with dates and times that you are considering stopping by our offices.
> Aloha,
> Clyde Sonobe

Of course the contracts referred to by Administrator Sonobe contained nothing that addressed the question about whether an RFP was required to contract with `Olelo.

CTPA believes that DCCA knew or should have known an RFP was required by state procurement law well before their 2005 request for exemption.

CTPA notes the Final Plan has not been implemented by DCCA. CTPA believes it is a fair assessment to conclude that the DCCA 2004 Final Plan has not addressed what the 1997 reports calls, "the fundamental issue was what is the vision for PEG access? ". The report's advice that "DCCA will have to limit

involvement by other government entities in PEG access decisions" has been ignored. DCCA has in fact increased this involvement to create the undue influence the public speaker faces today.

Undo Government Influence

If one continued to read the 1997 report they would find this statement:

> "Once, disputes between program producers and PEG access organizations were in the fore. While these disputes continue, they have been elbowed aside by situations involving more influential institutions and individuals."

If you asks who these, "influential institutions and individuals" are, and how they manipulated the system to "elbow aside" the public program producer, one will find education can be eliminated from consideration because it is a subset of government. Government is the institution, and the "influential individuals" are the people the government (DCCA) and cable companies appoint to the PEG boards. The non-first-come, discriminatory access confronting the public producer is therefore structural in nature, and DCCA is responsible for this institutionalized structural discrimination.

Consistent with the Hawaii Model outlined by CTPA, the current DCCA PEG structure commingles the funding and the resources to perform the functions of Public, Education, and Government access together. This allows PEGs to making funding and resource allocations on an ad-hoc basis that is difficult, if not impossible, to track given the lax reporting requirements of DCCA. The current DCCA Director is on record stating there is no "legal requirement" to fund the sectors of Public, Education, and Government equally. This is true, however, designing an opaque process and meaningless reporting requirements is not a legal requirement either, but this is the Hawaii Model currently in place.

CTPA's experience has been that the real function of these state controlled non-profit PEGs is not public speaker access, but a mechanism to slush resources back to government. DCCA has accomplished this through sole source contracts with PEGs in violation of state procurement law. This DCCA violation of law allowed the PEGs to accumulate experience providing PEG services while denying other independent service providers the opportunity to do likewise.

The DCCA recently requested PEGs be exempt from State procurement law by asserting that because PEG entities had a demonstrated track record of providing PEG services, The PEG's should be exempt from the law. The State Procurement Office initially approved the exemption, then rescinded the exemption, then denied the exemption. CTPA noted discrepancies in DCCA's exemption request and noted that an exemption approval would allow PEGs to unjustly benefit from DCCA's eleven years of illegal contract violations. If DCCA had its way the PEGs would be allowed to benefit from the fruit of the poisonous tree. The SPO exemption would be tantamount to rewarding PEGs for DCCA's violation of state law. There are many entities both public and private that have the experience and qualifications to submit an RFP.

The public program producer has been ill served by this institutionalized structural discrimination embodied in the Hawaii Model. For example according to the Ho`ike Managing Directors annual report under the category **"Number of new users"** there were **no new users** in the years 2003-2004. In 2005 Ho`ike removed the Number of New Users category from their reporting entirely. Ho`ike has stalled in its tracks serving select special and government interests that elbowed aside the public producer.

A detailed analysis of this institutionalized discrimination against the public user will be presented here as an exemplar representing a plethora of similar discriminatory practices. This example shows how the DCCA commissioned 2005 Independent Third Party Review, the Merina Report, excluded the majority of complaints by public speakers regarding a policy of discriminatory practices by the PEG.

The Merina Report

A reading of the DCCA commissioned independent accountant's report (the Merina report) reveals violations of agreed upon procedures by Merina, false statements to Merina by Ho`ike; and a summary of complaints by "type" that excludes the majority of complaints.

Violations of agreed upon procedures by Merina
In the case of Ho`ike, Merina failed to include complaints in the summary because:

1. there were a large number by some individuals
2. those individuals had been terminated

Nowhere in the agreed upon procedures does it allow exclusion of complaints because there were "a large number by some individuals", nor exclusion based upon "terminated" status. Exclusion from Summary of Complaints based upon "large number of complaints by individual users", or because a user is "terminated" was not used by Merina to exclude complaints in other PEG audits. This is a violation of agreed upon procedures. To make matters worse, the users alleged by Ho`ike to be "terminated" were, in fact not terminated. One user was "terminated" and later reinstated before the Merina report audit period began, and the other user was never "terminated" at all. Ho`ike knowingly fabricated and provided false information that individuals were "termination" to Merina to intentionally exclude complaints from the summary. Merina complied by ignoring the agreed upon procedures.

The Summary of Complaints about Ho`ike reported by Merina by type for 2003 are:

1. Technical Viewer 2
2. Technical User 0
3. Program Content 0

Seventeen (17) complaints were not summarized because of the large number from the same users and because those users were "terminated." Even if these 17 complaints were not excluded there would be no place to include them in the summary of complaints because no proper category "type" for these complaints existed. All 17 unlisted complaints regarded not program content complaints, nor technical viewer/user complaints, but **complaints of Ho`ike's violations of their own bylaws, rules, procedures, policies or agreement with DCCA.**

The agreed upon procedures for the Report Complaint Summary was structured by "types" that omitted a category for the vast majority of complaints regarding Ho`ike violations of their own bylaws, rules, procedures, and/or agreement with DCCA. While Ho`ike is responsible for providing Merina false information regarding users "terminated" status in an attempt to exclude complaints, DCCA is responsible for structuring the agreed upon summary"types" to exclude the majority of complaints from the summary report. DCCA, as the oversight agency, created a structural blind spot to conceal the central problem – PEG board violations of their own bylaws, rules, procedures, and agreement with DCCA.

CTPA will present one example of how the current PEG as structured by DCCA can be used to push the public speaker to the back of the access bus, while putting a government speaker in the drivers seat. CTPA calls this incident the end slate controversy.

End Slate Controversy

Here is an outline detailing how a PEG access entity discriminates against the public speaker through selective enforcement of a policy, while ignoring such policy enforcement when a government speaker violates the very same policy.

1. public speaker submits program
2. program is rejected by PEG access entity because it lacks the required end slate with producer contact information
3. public speaker corrects end slate and resubmits program
4. public speaker views a government speaker program without an end slate
5. public speaker files an end slate policy violation complaint to the PEG entity and DCCA
6. DCCA informs public speaker they do not regulate PEG and refers public speaker back to PEG entity
7. PEG entity claims to initiate an investigation into the public speaker's allegation of government speakers end slate violation.
8. public speaker continues inquiry as to status of complaint while PEG entity investigates public speaker allegation
9. PEG entity continue to broadcast government speakers program for four years while they conduct investigation.
10. PEG determines after a four year investigation that government entity is in violation of PEG end slate policy.
11. government speaker puts end slate on program.

The public speaker was a member of CTPA. The government speaker was the U.S. Armed Forces. The PEG entity was `Olelo. This is but one example from multiple instances of discrimination against public speakers based upon selective enforcement of policy. The public speakers program was not allowed even one airing without a proper end slate, but the government speaker was allowed to broadcast roughly 200 programs over a four-year period!

The consequences for the government speaker's four years of violation? Nothing beyond finally being compelled to comply with policy.

The consequence from DCCA for the PEG's for this ongoing discriminatory practice of selective policy enforcement against the public speaker? Nothing!

DCCA allows this type of discrimination against the public speaker by PEG entities without any consequences, and considers the actions of the public entity to resolve the situation to be adequate and responsive. Although CTPA has presented a long and dirty laundry list of such discriminatory practices by PEGs to DCCA the vast majority remain unresolved to this day.

Conclusion

The DCCA created the Hawaii Model to be intentionally complex and convoluted to mask the reallocation of funding and resources, intended for use by the public speaker, to government and other special interests. CTPA can cite many instances like the end slate example where a concerted and systematic application of rules, procedures, and practices target the public speaker.

CTPA can also cite numerous examples of the DCCA's defective and ineffective oversight regime. A oversight regime with enough blind spots to drive truckloads of misappropriated funds, reallocated resources, and discriminatory practices through, running over the pubic speakers interests without stopping and without

consequences.

CTPA believes the facts presented in this report makes a substantial case and provides enough evidence that the DCCA has ignored the advice of their own consultants. The most egregious example is the incorrect and inflammatory subtitle, “Splitting the baby is not the solution” in the 1997 report, “Disputes over PEG resources.” Nobody wanted to split a baby or read the report, most of all DCCA. Today due to DCCA's imposed structure and lax oversight baby PEG has become a dysfunctional three-headed monster. The two parasitic heads of Government and Education have sucked the lifeblood out of public access and the patient is now critical condition on life support. Now is the time for major surgery to remove the parasitic heads if public access is to survive.

Unfortunately the individual public speaker is by definition an undifferentiated interest not a special interest. No one speaks for the public speaker, not the Department of Commerce and Consumer Affairs, not Government, not Education, and not the PEG's they created, fund, and control. PEGs rounds up the few favored public speakers they do service, and trot them out like fattened cows to moo PEGs praises on script and on cue a public meetings to create a pastoral picture of a contented herd. Their bull is not getting gored.

Split PEG access into their respective functions. Transfer franchising authority and public access oversight to the local level. Obey procurement laws. Contract for public accesses services using the RFP process, contractually require the service provider to comply with **all** applicable open records and sunshine laws, and first and foremost compel strict compliance with the mission of “first-come, nondiscriminatory access”.

Edward Coll, President CTPA